

Attorney Docket No. TRAC-100FWC CON

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re Application of

RHONDA TRACY

Serial No.: 09/107,643

Filed: June 30, 1998

For: DISPOSABLE DIAPER WITH  
PADDED WAISTBAND  
AND PADDED LEGHOLES

Examiner: M. Polutta

Art Unit: 3761

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BOX AFTER FINALAssistant Commissioner for Patents  
Washington, D.C. 20231SECOND DECLARATION OF RHONDA TRACY

Dear Sir:

Rhonda Tracy declares as follows:

1. This declaration supplements my declaration dated January 28, 1999 which, I am informed, is of record in the above-captioned patent application.
2. I have claimed priority for the presently-rejected claims of my current patent application back to the filing of my design patent application Serial No. 93,681 filed September 8, 1987.
3. As of the September 8, 1987 filing date of my now-abandoned design patent

application Serial No. 93,681, disposable diapers that were common to the marketplace in the United States had an outer plastic layer that was fluid impervious. The innermost layer(s) were fluid permeable, and between the inner layer and the outer layer, the diaper contained a liquid-absorbing layer.

4. The title on my design patent application Serial No. 93,681 was, on information and belief, "An Ornamental Design for a Disposable Diaper." The description of the figures in the design application specified that Fig. 1 "is a perspective view of a disposable diaper showing my new design." I signed that design application on March 2, 1987.

5. I understood that the outermost layer illustrated in my figures 1-3 of my design application Serial No. 93,681 represented a plastic layer of the disposable diaper. Due to the prevalent nature of disposable diapers having the outer layer as plastic in that time era, I believe that the person of ordinary skill in the diaper designing art would understand from my figures and from the title of my design patent application that the outer layer was plastic.

6. It is also clear to me and in my opinion would have been clear to persons of ordinary skill in the diaper-designing art as of September 8, 1987, that the diaper design illustrated there had an outer layer with an edge at the top of the waistband, where the outer layer and the inner layer come together. On information and belief, a person of ordinary skill in the art would have understood from inspecting my design patent application that a plastic layer extends to the top of the waistband.

7. I understand that the Examiner in the present application raises various issues with regard to the word "soft." As used in these claims, the word "soft" pertains to the feel of the resulting product against the skin of the diaper wearer. This agrees, for example, with the first definition of "soft" appearing in a common dictionary: "pleasing or agreeable to the senses: bringing ease, comfort, or quiet <the ~ influences of home>" Websters New Collegiate Dictionary (Merriam Co., 1977) (copy attached). Thus, in the context of baby diapers, I understand the word "soft" as a

basic descriptive word that pertains to the resulting feel of the object against the skin. It is determined by tactile sensation.

8. Fig. 1 of my design patent application 93,681 shows that the item supporting the soft padding member in pending claim 7 is curved around the waistband so as to gird the wearer. This indicates that the substance is not so brittle as to be incapable of curvature. Fig. 2 also shows the member as flat. Moreover, the member as shown in Figs. 1 and 2 wrap around from the inside to the outside of the diaper, thereby further indicating their pliability and providing extra cushioning. In my opinion, the worker of ordinary skill in the art of diaper design in 1987 would have understood this member to be soft rather than hard and brittle and further would have understood it to be non-abrasive. Abrasive materials would be unsuitable for contact with the skin of babies in the waist and crotch area. I do not believe that persons skilled in the art of diaper design would misunderstand the word "soft" in the context of the claimed subject matter.

9. I believe that the ordinarily skilled diaper designer as of 1987 would have understood that the members (numbered as 50, 64, and 66 in my utility patents and the pending application) I added at the waistband and leg hole regions of my diaper design would have been understood to provide a soft surface. Further, I believe they would be understood to provide padding or a cushion effect. For example, elastic provided in a waistband of diapers of that era could be covered by my added strips, in the embodiment shown in the drawings. Such elastic as was being used in disposable diapers in the U.S. in 1986, in my experience, caused the diaper to leave lines or marks on the babies' skin. The threading and elastic would rub against the skin throughout the day with normal wear, and thus were flawed from a comfort perspective. My modifications overcame this, and this added layer between the skin of the baby and part of the diaper cushions against that abrasion.

10. I acknowledge that willful false statements and the like are punishable by fine or imprisonment or both under Title 18 USC 1001 and may jeopardize the validity of the patent application or any patent issuing thereon. The statements in this declaration that are made of my own knowledge are true and statements made herein on information and belief are believed by me to be true.

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Rhonda Tracy

Dated: April 18, 2000

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# WEBSTER'S

## New Collegiate Dictionary

*A Merriam-Webster®*

G. & C. MERRIAM COMPANY  
Springfield, Massachusetts, U.S.A.

**sodium fluoride • Sogdian**

sodium fluoride *n* : a poisonous crystalline salt NaF that is used in trace amounts in the fluoridation of water, in metallurgy, as a flux, as an antiseptic, and as a pesticide

sodium fluoroacetate *n* : a poisonous powdery compound  $C_2H_3FO_3Na$  used as a rodent poison

sodium hydroxide *n* : a white brittle solid NaOH that is a strong caustic basic used esp. in making soap, rayon, and paper

sodium hypochlorite *n* : an unstable salt NaOCl produced usu. in aqueous solution and used as a bleaching and disinfecting agent

sodium hyposulfite *n* 1: SODIUM THIOSULFATE 2: a crystalline water-soluble salt  $Na_2S_2O_4$  used esp. in dyeing and bleaching

sodium meta-silicate *n* \met-ə-sil-ə-kāt, -sil-kāt/ *n* : a toxic corrosive crystalline salt  $Na_2SiO_3$  used esp. as a detergent or as a substitute for phosphates in detergent formulations

sodium nitrate *n* : a deliquescent crystalline salt  $NaNO_3$  found in crude form in Chile and used as a fertilizer and an oxidizing agent and is curing meat

sodium nitrite *n* : a salt  $NaNO_2$  used esp. in dye manufacture and as a meat preservative

sodium pump *n* : the process by which sodium ions are actively transported across a cell membrane; esp. : the process by which the appropriate internal and external concentrations of sodium and potassium ions are maintained in a nerve fiber and which involves the active transport of sodium ions outward with movement of potassium ions to the interior

sodium salicylate *n* : a crystalline salt  $NaC_7H_5O_2$  that has a sweetish saline taste and is used chiefly as an analgesic, antipyretic, and antirheumatic

sodium sulfate *n* : a bitter salt  $Na_2SO_4$  used esp. in detergents, in the manufacture of wood pulp and rayon, in dyeing and finishing textiles, and in its hydrated form as a cathartic — compare GLAUBER'S SALT

sodium thiosulfate *n* : a hygroscopic crystalline salt  $Na_2S_2O_3$  used esp. as a photographic fixing agent and a reducing or bleaching agent — called also *hypo* sodium hyposulfite

sodium tripolyphosphate *n* \tri-pāl-i-fas-fāt/ *n* : a crystalline salt  $Na_3P_3O_{10}$  that is a major component of many detergents and a major contributor to water pollution

sodium-vapor lamp *n* : an electric lamp that contains sodium vapor and electrodes between which a luminous discharge takes place and that is used esp. for lighting highways

Sod-om \sād-əm/ *n* (Sodom, city of ancient Palestine destroyed by God for its wickedness (Gen 18:20, 21; 19:24–28)) : a place notorious for vice or corruption

sod-om-ite \sād-ə-mīt/ *n* : one who practices sodomy

sod-omy \sād-ə-mē/ *n* (ME, fr. OF *sodomie*, fr. LL *Sodomia*; Sodom; fr. the homosexual proclivities of the men of the city (Gen 19:1–11)) 1: copulation with a member of the same sex or with an animal 2: noncoital and esp. anal or oral copulation with a member of the opposite sex

so-av-er \sō-ev-ər/ *adv* [-soever (as in howsoever)] 1: to any possible or known extent — used after an adjective preceded by *how* or a superlative preceded by *the* <how fair ~ she may be> <the most selfish ~ in this world> 2: of any or every kind that may be specified — used after a noun modified esp. by *any*, *na*, or *what* <he gives no information ~>

SOF *abbr* sound on film

so-fa \sō-fə/ *n* [Ar *suffah* long bench] : a long upholstered seat usu. with arms and a back and often convertible into a bed

sofa bed *n* : an upholstered sofa that can be made to serve as a bed by lowering its hinged upholstered back to horizontal position

so-far \sō-far/ *n* [sound fixing and ranging] : a system for locating an underwater explosion at sea by triangulation based on the reception of the sound by three widely separated shore stations

so far as *conj* : insofar as

soff-it \sɔf-ət/ *n* [F *soffita*, fr. It *soffitta*, fr. (assumed) VL *sufflens* pp. of L *sufflere* to fasten underneath — more at SUFFIX] : the underside of a part or member of a building (as of an overhang or staircase); esp. : the intrados of an arch

soft \sɔft/ *adj* (ME, fr. OE *sōfte*, alter. of *sēfte*; akin to OHG *semfti* soft) 1 a: pleasing or agreeable to the senses : bringing ease, comfort, or quiet <the ~ influences of home> b: having a bland or mellow rather than a sharp or acid taste or flavor c (1) : not bright or glaring : SUBBED (2) : having or producing little contrast or a relatively short range of tones <a ~ photographic print> d: quiet in pitch or volume e of the eyes: having a liquid or gentle appearance f: smooth or delicate in texture grain, or fiber <~ cashmere> <~ fur> g (1) : balmy, mild, or clement in weather or temperature (2) : moving or falling with slight force or impact : not violent <~ breezes> 2: demanding little work or effort : EASY (PLEA ~ job) 3 a: sounding as in *ace* and *gem* respectively — used of *c* and *g* or their sound b of a consonant : VOICED c: constituting a vowel before which there is a /y/ sound or a /y/-like modification of a consonant or constituting a consonant in whose articulation there is a /y/-like modification or which is followed by a /y/ sound (as in Russian 4 *archaté* : moving in a leisurely manner 5: rising gradually <~ slope> 6: having curved or rounded outline : not harsh or jagged <~ hills against the horizon> 7: marked by gentleness, kindness, or tenderness as a (1) : not being or involving harsh or onerous terms : EASY (a policy of ~ competition) (2) : based on negotiation and conciliation rather than on a show of power or on threats <took a ~ line towards the enemy> b: tending to ingratiate or disarm : ENGAGING, KIND <a ~ answer turns away wrath> — Prov 15:1 (RSV) c: marked by mildness : UNASSUR-ING, LOW-KEYED B a: emotionally suggestible or responsive : IMPRESSIONABLE b: unduly susceptible to influence : COMPLIANT c (1) : lacking firmness or strength of character : FEEBLE, UNMAY-INGLY (2) : marked by a gradually declining trend : not firm <wood prices are increasingly ~> d: amorously attracted or emotionally involved — used with *on* <has been ~ on her for years> 9 : lacking robust strength, stamina, or endurance esp. because of living in ease or luxury b: weak or deficient mentally 10 : yielding to physical pressure b: permitting someone or some-

thing to sink in — used esp. of wet ground c (1): of a consistency that may be shaped or molded (2) of cheese: capable of being spread d: easily magnetized and demagnetized e: lacking relatively or comparatively in hardness <~ iron> 11: deficient in or from substances (as calcium and magnesium salts) that prevent lathering of soap <~ water> 12: having relatively low energy circumstances as to avoid destructive impact <~ landing of a spacecraft on the moon> 14: not protected against enemy attack <a ~ aboveground launching site> 15 of a detergent: BIODEGRADABLE 16 of a drug: considered less detrimental than a hard narcotic <marijuana is usually regarded as a ~ drug> 17: easily polarized — used of acids and bases — soft-ish /soft-ish/ adj — soft-ly /soft-ly/ adv — soft-ness /soft(-)ness/ n  
syn SOFT, BLAND, MILD, GENTLE, LENIENT shared meaning element  
2: devoid of harshness, roughness, or intensity ant hard, stern  
3 soft adv: in a soft or gentle manner: SOFTLY  
soft-ball /soft(-)balk/ adj: SOFT-COVER — softbeck n  
soft-ball /soft(-)bolk/ n: baseball played on a small diamond with a ball that is larger than a baseball and that is pitched underhand; also: the ball used in this game  
soft-bill /soft(-)bil/ n: a bird with a weak bill adapted to feeding esp. on insects — compare HARD-BILL  
soft-boiled /soft(-)old/ adj 1 of an egg: boiled to a soft consistency 2: SENTIMENTAL  
soft-bound /soft(-)baund/ adj: SOFT-COVER  
soft chancre n: CHANCROID  
soft coal n: BITUMINOUS COAL  
soft-cover /soft(-)kav-er/ adj: bound in flexible covers: not bound in hard covers: specif: PAPERBACK <~ books>  
soft drink n: SODA POP  
soft-en /soft(-)en/ vb softened; soft-en-ing /soft(-)ing/ n 1: to make soft or softer 2 a: to weaken the military resistance or the morale of esp. by harassment (as preliminary bombardment) — often used with up b: to impair the strength or resistance of — often used with up <~ up a sales prospect> ~ vt: to become soft or softer — soft-en-er /soft(-)er/ n  
soft-finned /soft(-)find/ adj: having fins in which the membrane is supported entirely or mostly by soft or articulated rays — used of higher teleost fishes: compare SPINY-FINNED  
soft goods n pl: goods that are not durable — used esp. of textile products  
soft hail n: GRAUPEL  
soft-head /soft(-)hed/ n: a silly or feeble-minded person  
soft-head-ed /soft(-)hed-ed/ adj: having: a weak, unrealistic, or uncritical mind — soft-head-ed-ly adv — soft-head-ed-ness n  
soft-heart-ed /soft(-)hart-ed/ adj: emotionally responsive: SYMPATHETIC — soft-heart-ed-ly adv — soft-heart-ed-ness n  
soft-land /soft(-)land/ vb soft-land-ing fr. soft landing vi: to make a soft landing on a celestial body (as the moon) ~ vt: to cause to soft-land — soft-land-er n  
soft palate n: the fold at the back of the hard palate that partially separates the mouth and pharynx  
soft-pedal /soft(-)ped-əl/ vi 1: to use the soft pedal in playing 2: to play-down: OBSCURE, MUFFLE <~ the issue>  
soft pedal n 1: a foot pedal on a piano that reduces the volume of sound 2: something that muffles, deadens, or reduces effect  
soft rot n: a mushy, watery, or slimy decay of plants or their parts caused by bacteria or fungi  
soft scale n: a scale insect more or less active in all stages  
soft sell n: the use of suggestion or gentle persuasion in selling rather than aggressive pressure — compare HARD SELL  
soft-shell /soft(-)shel/ or soft-shelled /soft(-)sheld/ adj: having a soft or fragile shell esp. as a result of recent shedding  
soft-shell clam n: an elongated clam (*Mya arenaria*) of the east coast of N. America that has a thin friable shell and long siphons and is used esp. for steaming — called also soft-shelled clam steamer  
soft-shelled turtle n: any of numerous aquatic turtles (family Trionychidae) that have sharp claws and mandibles and a flat shell covered with soft leathery skin instead of with horny plates  
soft-shoe /soft(-)shü/ adj: of or relating to tap dancing done in soft-soled shoes without metal taps  
soft-soap /soft(-)sop/ vi: to soothe or persuade with flattery or blarney — soft-soap-er /soft(-)sop-er/ n  
soft soap n 1: a semifluid soap 2: FLATTERY  
soft-spoken /soft(-)spö-kən/ adj: having a mild or gentle voice: also: SLAVE  
soft spot n 1: a sentimental weakness <has a soft spot for him> 2: a vulnerable point <a soft spot in the defense system>  
soft touch n: one who is easily imposed on or taken advantage of  
soft-ware /soft(-)twä(-)r, -twe(-)är/ n 1: the entire set of programs, procedures, and related documentation associated with a system and esp. a computer system: specif: computer programs 2: something used or associated with and usu. contrasted with hardware: esp: materials for use with audiovisual equipment  
soft wheat n: a wheat with soft starchy kernels high in starch but usu. low in gluten  
soft-wood /soft(-)wüd/ n 1: the wood of a coniferous tree including both soft and hard woods 2: a tree that yields softwood  
2 softwood adj 1: having or made of softwood 2: consisting of immature still pliable tissue <~ cuttings for propagating plants>  
soft-wood-ed /soft(-)wüd-ed/ adj 1: having soft wood that is easy to work or finish 2: SOFTWOOD 1  
softy or softie /soft(-)i/ n, pl softies ['softi] 1: an excessively sentimental or susceptible person 2: a weak, effeminate, or foolish person  
Sog-dian /sog(-)dän/ n [L. Sogdian, pl., fr. pl. of sogdianus adj. Sogdian, fr. Ops. Sughda Sogdiana] 1: a native or inhabitant of Sogdiana 2: an Iranian language of the Sogdians — see INDO-EUROPEAN LANGUAGES table  
Sogdian /sog(-)dän/ n, pl Sogdians

soak-ay \sə-  
: saturate  
SOAKED-G  
cooking-  
\sə-  
soil-dī-  
so-CALLED  
soil-gnē a  
cart of. fr  
restaurant  
1soil \sɔɪl  
pigsty, p  
or defile  
superficial  
reputation  
2soil n  
: moral  
pollutur  
3soil n (M  
— more  
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4soil v [c  
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by fecdin  
soil-age \  
being soil  
soil bank  
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rure>  
soil pipe  
soil scler  
soil serie  
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vegetatio  
soil-ure \  
soiled 2  
soi-ree a  
party, fr  
— more  
soi-xante  
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in a med  
diatonic  
2soil \sɔɪl  
equal to  
3soil \sɔɪl  
— see M  
4soil \sɔɪl  
colloidal  
5soil abbi  
Sol \sɔl  
sola pl a  
1so-lace  
solar t  
anxiety  
2solace  
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syn see  
so-la-na-  
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